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CHURCH OF SCIENTOLOGY  
9 INTERNATIONAL

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF MARIN

12 CHURCH OF SCIENTOLOGY ) CASE NO. 157 680  
INTERNATIONAL, a California not- )  
13 for-profit religious corporation, ) [CONSOLIDATED]  
)  
14 ) PLAINTIFF'S MEMORANDUM OF  
Plaintiff, ) POINTS AND AUTHORITIES IN  
) SUPPORT OF MOTION FOR  
15 ) SUMMARY ADJUDICATION OF THE  
vs. ) THIRTEENTH, SIXTEENTH,  
16 ) SEVENTEENTH AND NINETEENTH  
) CAUSES OF ACTION OF  
17 ) PLAINTIFF'S SECOND AMENDED  
GERALD ARMSTRONG; DOES 1 through )  
18 25, inclusive, ) COMPLAINT  
)  
19 ) DATE: April 14, 1995  
Defendants. ) TIME: 9:00 a.m.  
20 ) DEPT: 1  
)  
21 ) TRIAL DATE: May 18, 1995

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiff Church of Scientology International ("the Church")  
4 seeks summary adjudication of four causes of action contained in  
5 its Second Amended Complaint, each of which consists of a breach  
6 of contract by defendant Gerald Armstrong ("Armstrong") for which  
7 the Church is entitled to liquidated damages.

8 On January 27, 1995, this Court heard a motion by the Church  
9 for summary adjudication of three similar causes of action for  
10 breach of contract, and granted summary adjudication as to two of  
11 them. In each instance, Armstrong was found to have breached  
12 paragraph 7(d) of the 1986 settlement agreement ("the  
13 Agreement"), in which Armstrong agreed that he would not disclose  
14 to third parties his experiences with the Church of Scientology  
15 or any knowledge or information he might have concerning the  
16 Church, and ordered to pay the Church \$50,000 in liquidated  
17 damages for each breach. This Court has, accordingly, already  
18 determined that the contractual provision prohibiting Armstrong  
19 from making disclosures, and the liquidated damages provision are  
20 valid. [Sep.St.No. 4.]

21 Here, the Church seeks summary adjudication as to the four  
22 additional breaches of that same paragraph of the Agreement, and  
23 asks for liquidated damages for each breach pursuant to the same  
24 liquidated damages clause. Specifically, the facts are  
25 undisputed that Armstrong breached paragraph 7(d) of the  
26 Agreement by:

27 \* Giving a videotaped interview concerning his  
28 claimed Scientology knowledge and experiences to Sylvia

1 "Spanky" Taylor, at a convention of the Cult Awareness  
2 Network in November, 1992;

3 \* Giving interviews, and sending information,  
4 to Newsweek reporter Charles Fleming, concerning his  
5 claimed Scientology knowledge and experiences in June  
6 and August, 1993;

7 \* Giving an interview to E! TV reporters  
8 concerning his claimed Scientology knowledge and  
9 experiences in August, 1993; and

10 \* Providing declarations concerning his claimed  
11 Scientology knowledge and experiences to Graham Berry,  
12 attorney for Uwe Geertz, in the case of Church of  
13 Scientology International v. Steven Fishman et al.,  
14 United States District Court for the Central District  
15 of California, Case No. 91-6426 HLH (Tx) (the "Fishman  
16 case") in February and April, 1994.

17 The facts which comprise these breaches have been admitted  
18 by Armstrong, and this Court has already adjudicated that the  
19 panoply of affirmative defenses alleged by Armstrong so not raise  
20 any triable issue of material fact. Summary adjudication should  
21 accordingly be granted as to the Thirteenth, Sixteenth,  
22 Seventeenth and Nineteenth Causes of Action.

## 23 II. STATEMENT OF FACTS

### 24 A. The Settlement Agreement

25 As this Court has already found, in December, 1986,  
26 Armstrong entered into the Agreement with the Church, freely,  
27 voluntarily, and without duress. [Sep.St.No. 4.] The Agreement  
28 provided for a mutual release and waiver of all claims arising

1 out of a cross-complaint which defendant Armstrong had filed in  
2 Church of Scientology of California v. Gerald Armstrong, Los  
3 Angeles Superior Court No. C 420153. The Agreement contains  
4 various provisions designed to guarantee that new actions were  
5 not spawned or encouraged by the conclusion of the old one. In  
6 particular, with respect to the causes of action at issue in this  
7 motion, paragraph 7(D) provides that Armstrong: (1) would not  
8 create or publish, or assist another in creating or publishing,  
9 any media publication or broadcast, concerning information about  
10 the Church of Scientology, L. Ron Hubbard, or any other persons  
11 or entities released by the Agreement; (2) would maintain "strict  
12 confidentiality and silence" with respect to his alleged  
13 experiences with the Church or any knowledge he might have  
14 concerning the Church, L. Ron Hubbard, or other Scientology-  
15 related entities and individuals; (3) would not disclose any  
16 documents which related to the Church or other identified  
17 entities and individuals; and (4) would pay to the Church \$50,000  
18 in liquidated damages for each disclosure or other breach of that  
19 paragraph.<sup>1</sup>

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20  
21 <sup>1</sup> Paragraph 7(D) provides, in relevant part: "Plaintiff  
22 [Armstrong] agrees never to create or publish or attempt to  
23 publish, and/or assist another to create for publication by means  
24 of magazine, article, book or other similar form, any writing or  
25 to broadcast or to assist another to create, write, film or video  
26 tape or audio tape any show, program or movie, or to grant  
27 interviews or discuss with others, concerning their experiences  
28 with the Church of Scientology, or concerning their personal or  
indirectly acquired knowledge or information concerning the  
Church of Scientology, L. Ron Hubbard or any of the  
organizations, individuals and entities listed in Paragraph 1  
above. [Armstrong] further agrees that he will maintain strict  
confidentiality and silence with respect to his experiences with  
the Church of Scientology and any knowledge or information he may  
have concerning the Church of Scientology, L. Ron Hubbard, or any  
(continued...)

1 Armstrong admittedly received more than half a million  
2 dollars as his portion of a total settlement paid to his  
3 attorney, Michael Flynn, in a block settlement concerning all of  
4 Mr. Flynn's clients who were in litigation with any Church of  
5 Scientology or related entity. [Sep.St.Nos. 1-4.]

6 **B. Armstrong's Breaches of Paragraph 7(D) of the Agreement**

7 **1. Armstrong Violated The Agreement By Giving An**  
8 **Interview To Sylvia "Spanky" Taylor And Jerry Whitfield**

9 Armstrong has admitted that in November, 1992, he agreed to  
10 be interviewed, on videotape, concerning his claimed Scientology  
11 knowledge and experiences. [Sep.St.Nos. 5-6.] The "interviewers"  
12 were two ex-Scientologists, Sylvia "Spanky" Taylor, and Jerry  
13 Whitfield. [Id.] The venue was a Los Angeles hotel in which the  
14 Cult Awareness Network ("CAN") was holding its annual meeting.  
15 [Sep.St.No. 6.] Mr. Whitfield is a self-described "counselor"  
16 who, for a substantial fee, will attempt to "deprogram"

17 \_\_\_\_\_  
18 <sup>1</sup>(...continued)  
19 of the organizations, individuals and entities listed in  
20 Paragraph 1 above. [Armstrong] expressly understands that the  
21 non-disclosure provisions of this subparagraph shall apply, inter  
22 alia, but not be limited, to the contents or substance of his  
23 complaint on file in the action referred to in Paragraph 1  
24 hereinabove or any documents as defined in Appendix "A" to this  
25 Agreement, including but not limited to any tapes, films,  
26 photographs, recastings, variations or copies of any such  
27 materials which concern or relate to the religion of Scientology,  
28 L. Ron Hubbard, or any of the organizations, individuals, or  
entities listed in Paragraph 1 above... [Armstrong] agrees that  
if the terms of this paragraph are breached by him, that CSI and  
the other Releasees would be entitled to liquidated damages in  
the amount of \$50,000 for each such breach. All monies received  
to induce or in payment for a breach of this Agreement, or any  
part thereof, shall be held in a constructive trust pending the  
outcome of any litigation over said breach. The amount of  
liquidated damages herein is an estimate of the damages each  
party would suffer in the event this Agreement is breached. The  
reasonableness of the amount of such damages are hereto  
acknowledged by [Armstrong]."

1 Scientology parishioners<sup>2</sup> at the behest of family members who  
2 have been frightened by a barage of unfavorable commentary about  
3 Scientology. During the course of Armstrong's 95 minute  
4 interview, Whitfield explained his purpose in making the  
5 videotape:

6 MR. WHITFIELD: The reason I am saying this, it's  
7 very difficult for somebody in Scientology to conceive  
8 that the great L. Ron Hubbard, whom you have never met  
9 but have only heard these wonderful things about, to  
10 even perceive or comprehend that this might have been -  
11 - this might have occurred with this man. How can this  
12 man be human? And he's not human. He's L. Ron  
13 Hubbard. So the reason that we are doing this  
14 interview is so that other people can know. It's very  
15 easy for a non - Scientologist to understand those  
16 things. It's very difficult for a Scientologist,  
17 because Scientologists don't get the type of  
18 information that non-Scientologists have.

19 [Sep.St.No. 7] (Emphasis supplied). Whitfield and Taylor made it  
20 very clear that they wanted Armstrong to describe fully his  
21 claimed Scientology knowledge and experience for use in future  
22 deprogrammings -- and Armstrong was happy to oblige:

23 TAYLOR: We're here with Gerry Armstrong on the  
24 6th of November, 1992. Hi, Gerry.

25 ARMSTRONG: Hi, Spanky.

26 TAYLOR: Basically, what we're doing here is I  
27 want to find out a little bit about your Scientology  
28 experience, or, more than a little bit -- as much as we  
can, starting from when you got involved.

ARMSTRONG: O.K.

TAYLOR: So, tell me about that first.

---

29 <sup>2</sup> Deprogrammers have been defined by the courts as "people who,  
30 at the request of a parent or other close relative, will have a  
31 member of a religious sect seized, then hold him against his will  
32 and subject him to mental, emotional and even physical pressure  
33 until he renounces his religious beliefs. Deprogrammers usually  
34 work for a fee, which may easily run as high as \$25,000."

35 Columbrito v. Galen Kelly (2nd Cir. 1985) 764 F.2d 122, 125, n.1.



1 TAYLOR: I got involved in 1969 in Vancouver,  
2 British Columbia, Canada. And . . . I spent a year and  
a half . . . .

3 [Sep.St.No. 8.] Armstrong proceeded to describe his claimed  
4 Scientology history in great detail for 95 minutes, breaking only  
5 to attend sessions of the CAN convention which was proceeding in  
6 the hotel conference rooms. [Id.]

7 During the interview, Armstrong also made it clear that he  
8 understood that he was breaching the Agreement by making the  
9 videotape, but reiterated that he considered both the Agreement  
10 and the injunction entered by Judge Sohigian to be unenforceable:

11 ARMSTRONG: They brought a lawsuit to attempt to  
12 enforce the settlement agreement. Out of it . . . in  
13 May of this last year, there was a hearing here in Los  
14 Angeles, in Superior Court, in front of Judge Sohigian.  
15 The organization claims that they got a great big win  
16 out of it and that I am enjoined pursuant to the  
17 settlement agreement. Not true! The judge  
18 specifically said that he would not enforce the  
19 settlement agreement other than one very narrow issue.  
20 The very narrow issue is that I cannot except pursuant  
21 to a subpoena, assist someone intending to file a claim  
22 or pressing a claim against the organization. Now then  
23 we are appealing even that narrow ruling, because  
24 that's unenforceable because if you construe that my .  
25 . . . that this video could possibly indirectly help  
26 someone in the future, I can't do this. . . . .

27 \* \* \*

28 It's unenforceable hence I feel that I am completely at  
liberty to associate with whomever I want, to talk to  
whomever I want, and I act in life that way. And that  
is in part why I am here at this event now, why I came  
to the CAN conference.

[Sep.St.No. 9] (Emphasis supplied).

Armstrong's videotaped interview by Taylor and Whitfield is  
an unequivocal violation of paragraph 7(d), for which the Church  
is entitled to \$50,000 in liquidated damages.

///

1           2.    **Armstrong Violated The Agreement By Providing**  
2                   **Interviews About His Claimed Scientology Knowledge And**  
3                   **Experiences To Newsweek Reporter Charles Fleming**

4           In June, 1993, Armstrong gave an interview concerning his  
5           claimed Scientology knowledge and experiences to Charles Fleming,  
6           a reporter for Newsweek magazine. Some of Armstrong's remarks  
7           about L. Ron Hubbard were then quoted by Mr. Fleming in his  
8           article. [Sep.St.Nos. 10-11.]

9           Armstrong also has admitted that he spoke to Mr. Fleming  
10           about Larry Wollersheim's case against the Church of Scientology  
11           of California, and attempted to interest Mr. Fleming in reporting  
12           on that matter. [Sep.St.No. 12.]

13           In addition, Armstrong has admitted that he sent Mr. Fleming  
14           a letter in August, 1993, to which he attached several documents  
15           detailing his claimed Scientology knowledge and experiences,  
16           urging Mr. Fleming to write a story about the instant litigation.  
17           [Sep.St.No. 13.]

18           Armstrong's disclosures to Mr. Fleming are another  
19           unequivocal breach of paragraph 7(d) of the Agreement, for which  
20           the Church is entitled to \$50,000 in liquidated damages.

21           3.    **Armstrong Violated The Agreement By Providing**  
22                   **Interviews About His Claimed Scientology Knowledge And**  
23                   **Experiences To E! Television**

24           In August, 1993, Armstrong provided an interview to E!TV,  
25           portions of which aired on national television. During the  
26           interview, Armstrong discussed his claimed Scientology knowledge  
27           and experiences, asserting that he had difficulty leaving  
28           Scientology, that the Church had a policy called "fair game,"  
          that the instant lawsuit was improper, and the Agreement was  
          illegal. [Sep.St.Nos. 14-15.] Armstrong has also admitted that

1 he gave E!TV a copy of a manuscript entitled "One Hell of A  
2 Story," which, according to Armstrong, is a treatment for a  
3 screenplay which details his claimed Scientology experiences.

4 [Sept.St.No. 16.]

5 Armstrong's provision of an interview to E!TV for broadcast  
6 purposes, on the subject of Scientology, is a clear violation of  
7 paragraph 7 (d), for which Armstrong must pay the Church \$50,000  
8 in liquidated damages.

9 **4. Armstrong Violated The Agreement By Providing**  
10 **Declarations About His Experiences With The Church And**  
**Additional Documents To Anti-Church Litigant Uwe Geertz**

11 In or about 1992, Armstrong agreed to appear as an "expert"  
12 witness on the subject of Scientology on behalf of defendant Uwe  
13 Geertz in the Fishman case. [Sep.St.Nos. 17-18.] Armstrong has  
14 admitted that he spoke multiple times with Geertz's counsel,  
15 Graham Berry, concerning his claimed Scientology knowledge and  
16 experiences. Armstrong claims that Berry asked him to for help in  
17 identifying other potential witnesses interested in making  
18 derogatory statements about Scientology, and Armstrong obliged by  
19 sending Berry a letter describing the claims made by several  
20 other active anti-Scientologists. [Sep.St.Nos. 19-20.] Armstrong  
21 also met with Berry, and a cadre of other anti-Scientology  
22 litigants and would-be witnesses, at Berry's office, wherein all  
23 discussed Scientology, their claimed knowledge and experiences,  
24 and the Fishman case. [Sep.St.No. 21.]

25 In addition, Armstrong furnished Berry with with not one,  
26 but two declarations describing his claimed Scientology knowledge  
27 and experiences, one of which was filed in the Fishman case in  
28 February, 1994. [Sep.St.No. 22.]

1           These disclosures of Armstrong's claimed Scientology  
2 knowledge and experiences to the attorney of an anti-Scientology  
3 litigant are additional violations of paragraph 7(d), and warrant  
4 liquidated damages in the amount of \$50,000.

5                                       **III. ARGUMENT**

6       **A. Armstrong's Liability For The Breaches May Be**  
7       **Determined By Summary Adjudication**

8           A motion for summary adjudication "shall be granted if all  
9 the papers submitted show that there is no triable issue as to  
10 any material fact and that the moving party is entitled to a  
11 judgment as a matter of law." Code Civ. Proc. § 437c(c).

12       Moreover, under a provision recently added to the Code of Civil  
13 Procedure:

14               (n) For purposes of motions for summary judgment  
15 and summary adjudication:

16               (1) a plaintiff or cross-complainant has met his  
17 or her burden of showing that there is no defense to a  
18 cause of action if that party has proved each element  
19 of the cause of action entitling the party to judgment  
20 on that cause of action. Once the plaintiff or cross-  
21 complainant has met that burden, the burden shifts to  
22 the defendant or cross-defendant to show that a triable  
23 issue of one or more material facts exists as to that  
24 cause of action.

25       C.C.P. §437c(n)(1). As demonstrated below, and in the Separate  
26 Statement of Undisputed Facts, the Church has met its burden by  
27 proving, from Armstrong's own admissions, each element of the  
28 causes of action for breach of contract for which summary  
adjudication is sought. The burden, accordingly, shifts to  
Armstrong to demonstrate that a triable issue of material fact  
exists as to plaintiff's claims. Armstrong is simply unable to  
meet that burden. He has already admitted the facts of each of  
the claimed breaches, and does not dispute that his actions

1 constitute a breach of the contract, so long as the contract is  
2 enforceable.

3 Moreover, this Court has already rejected each of his  
4 claimed affirmative defenses, finding that on January 27, 1995  
5 that the Agreement was fully enforceable against him. This is  
6 the law of the case. Just as this Court found, on the basis of  
7 undisputed evidence, that the Church was entitled to judgment on  
8 the Fourth and Eleventh Causes of Action, so must this Court  
9 find, on the basis of the undisputed admissions established  
10 herein, that the Church is entitled to summary adjudication of  
11 the Thirteenth, Sixteenth, Seventeenth and Nineteenth Causes of  
12 Action.

13 **B. The Undisputed Evidence Concerning These Four Causes Of**  
14 **Action Supports A Judgment For Plaintiff In The Combined**  
**Amount of \$200,000 In Liquidated Damages**

15 To establish its claim for breach of contract, the Church  
16 must establish, by competent and undisputed evidence, "(1) the  
17 contract, (2) plaintiff's performance or excuse for nonperfor-  
18 mance, (3) defendant's breach, and (4) the resulting damages to  
19 plaintiff." Reichert v. General Insurance Company of America  
20 (1968) 68 Cal.2d 822, 830, 69 Cal.Rptr. 321, 325, 462 P.2d 377.

21 Each of these elements is fully established by undisputed  
22 evidence as to plaintiff's Thirteenth, Sixteenth, Seventeenth and  
23 Nineteenth Causes of Action. This Court's ruling on the prior  
24 summary adjudication motion establishes, as a matter of law, the  
25 contract, the Church's performance, and the amount of damage for  
26 breach of paragraph 7(d) -- liquidated damages of \$50,000 for  
27 each breach. The final element -- breach of the contract by  
28 Armstrong -- is established by undisputed evidence, most of it in

1 the form of Mr. Armstrong's writings, appearances and/or  
2 testimony, as to each of the breaches.

3 Each of the acts that constitute a breach has been admitted  
4 by Armstrong, either in his Answer to the Amended Complaint, in  
5 deposition, or both. The evidence chronicled in the separate  
6 statement demonstrates not one, but four separate, individual  
7 breaches of paragraph 7(D) of the Agreement.

8 CONCLUSION

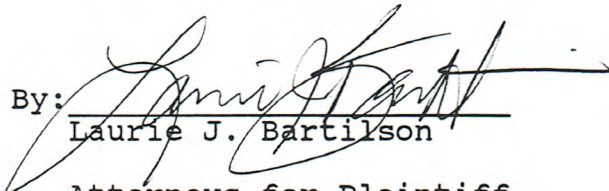
9 Armstrong has admitted to four separate breaches of the  
10 Agreement which require him to pay the Church a combined amount  
11 of \$200,000 in liquidated damages. There are no disputed issues  
12 of fact as to any of the elements of plaintiff's claims.  
13 Plaintiff is, accordingly, entitled to summary adjudication of  
14 its Thirteenth, Sixteenth, Seventeenth, and Nineteenth Causes of  
15 Action, and it is entitled to entry of judgment on those claims  
16 in the amount of \$200,000.

17 Dated: March 17, 1995

Respectfully submitted,

18 Andrew H. Wilson  
19 WILSON, RYAN & CAMPILONGO

20 MOXON & BARTILSON

21 By:   
22 Laurie J. Bartilson

23 Attorneys for Plaintiff  
24 CHURCH OF SCIENTOLOGY  
25 INTERNATIONAL